

REMARKS

Applicant acknowledges receipt of the Examiner's Office Action dated August 10, 2006. The Office Action rejected all claims pending at that time.

Independent claim 47 has been amended to incorporate the limitations of dependent claim 48. Independent claim 49 has been amended to incorporate the limitations of dependent claim 52.

The combination of previously presented claims 47 and 48 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,507,950 issued to Tsukidate et al. ("Tsukidate") in view of International Patent Application Publication No. WO99/01984 filed by Maissel et al. ("Maissel"). Previously dependent claim 48 recited:

copying the first portion from the RAM to the hard disk;
deleting the first portion from the RAM after it is copied to the hard disk

The Office Action admits that Tsukidate fails to teach the foregoing limitations. However, the Office Action takes official notice that is well known in the art to copy data from a cache memory to a hard disk, and to thereafter delete said data from the cache after it is copied from the hard disk for the purpose of reducing access time for active data/applications.

Claim 47 as amended recites storing the first portion from the hard disk to the RAM. The same first portion is then copied from the RAM to the hard disk before the first portion is deleted from the RAM. In other words, the claim makes clear the first portion is not modified before it is copied to the hard disk and subsequently deleted.

While it might be well known to copy data from a cache memory to a hard disk and thereafter delete the data from the cache, the official notice does not assert that the data copied from the RAM to the hard disk is unmodified data. Applicants assert that while it might be well known in the art to copy data from a cache memory to a hard disk, and to thereafter to delete said data from the cache after it is copied, in general, the data that is copied from cache to the hard disk is data that has been modified while in the cache, and the modified cache data is copied to hard disk to preserve the integrity of data in the hard disk. In now amended independent claim 47, the same data that was copied from the hard disk to the RAM is subsequently copied back to the hard disk; no modification is made to the data before it is copied back to the hard disk. As such, Applicants assert that independent claim 47 is patentably distinguishable.

Claim 49 has been amended to incorporate the limitations of dependent claim 52.

Claim 52 was rejected under 35 U.S.C. § 103 as being unpatentable over Tsukidate.

Limitations of dependent claim 52 added to independent claim 49 include:

accessing one or more of the first portions stored in the RAM;
the set top receiver detecting one of the first portions stored in the RAM,
which is less frequently accessed than the other first portions
stored in the ram;
moving the detected one of the first portions stored in the RAM to the
hard disk.

In rejecting claim 52, the Office Action admits that Tsukidate fails to teach the aforementioned limitations. However, the Office Action takes official notice that it is well known in the art to employ a caching scheme in which the least frequently accessed data is moved from a cache memory to a hard disk, and to thereafter delete said data from the cache after it is copied from the hard disk for the purpose of reducing access time for active data/applications. Applicants traverse this official notice.

Official notice without documentary evidence is permissible only in some circumstances. While “official notice” may be relied on, the circumstances should be rare when, as here, an application is under final rejection or action under 37 CFR 1.113.

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known. It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as stand in the pertinent art. See MPEP 2144.03 A. Holding that general conclusions considering what is “basic knowledge” or “common sense” to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection. *In re Zurko*, 59 USPQ2d at 1386 (Fed. Cir. 2002). Applicants do not believe a caching scheme in which the least frequently accessed data is moved from a cache memory to a hard disk is capable of instant and unquestionable demonstration.

As noted above, while it might well known that data is deleted from a cache after it is copied to the hard disk, the data that is copied to the hard disk is data that has been modified in order to preserve data integrity. The above limitations make clear that the data that is moved to the hard disk is the same data that was copied from the hard disk to the RAM. As such, Applicants assert that independent claim 49 is patentably distinguishable.

Applicant submits that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on November 10, 2006.


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10/1/06
Date of Signature

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